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ABSTRACT

A study investigated the types of advertisements newspapers refuse as well as the attitudes of advertising managers about guidelines and laws concerning advertising refusal. Newspapers were selected from the "1985 Editor and Publisher Yearbook" using a systematic probability sampling method, and questionnaires were mailed to advertising managers at 150 daily newspapers. Data indicated a tremendous diversity among newspapers regarding their refusal policy. Among the conclusions reached in the study are that southern newspapers tend to be the most conservative newspapers in the country, while southern advertising managers tended to be more conservative with respect to their absolute right to refuse any advertisement in a nonmonopoly situation. Once a policy has been established, written or otherwise, it appears that companies or organizations may not even try to advertise in certain communities. In addition, newspapers want not only to continue the freedom of refusal they now have but also to extend that freedom to broadcasters as well. (Tables of data are included, and 53 footnotes are appended.) (DF)

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ADVERTISING DIVISION

"No Thank You, We'd Rather Not:"

The rights and policies of daily newspapers relating to refusals to accept advertising

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and

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"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Sandra H. Utt

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

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While commercial speech in the United States has gained a substantial degree of First Amendment protection in the last decade,[1] and while most advertisements are routinely accepted and published, the fact remains that an advertiser's right of access to a privately owned newspaper's pages is by no means guaranteed. As a private enterprise, a newspaper has the right to deal with--and refuse to deal with--whomever it pleases, Inherent in that right is the authority in most cases to reject advertisements even if they promote legal products or services in a non-deceptive way.

On occasion, the right to place an advertisement for a certain type of product is proscribed by law. For example, Oregon once barred ads for treatments of venereal disease[2] and South Dakota more recently had a law prohibiting the inclusion of prices in liquor advertising.[3] Mississippi's attempt to prohibit all intrastate liquor advertising was upheld in 1983 by the Fifth Circuit Court of Appeals,[5] and is reflected by the fact that 17 dailies in the state formally refuse to accept ads for alcoholic beverages.[6] A Tennessee law which required certain newspapers in the state to include warnings in alcoholic beverage ads was struck down,[7] while Idaho's Supreme Court recently held that government may prohibit commercial speech relating to illegal activity.[8] The Idaho case echoed a 1973 decision of the U.S. Supreme Court which held that advertisements for illegal activities (in that case, discriminatory help wanted ads) may be regulated.[9]

Quite often, the government's decision to proscribe a class of advertisements is a result of pressure group lobbying. For example,

in early 1985 one group recommended a blanket ban on cigarette advertising.[10]

But, in most cases a refusal to accept advertising by a newspaper is based either on a publication's policy or judgment. Among the nation's approximately 1,700 daily newspapers, at least 306 specifically prohibit one or more categories of advertising as a matter of policy.[11] These proscribed categories range from fortune teller ads to Hong Kong tailors, from hair restorers to envelope stuffing, but the most commonly listed blanket prohibitions are for alcoholic beverages (129 newspapers), investments (70) and the occult (55).[12] The list continues to grow. In 1984, newspapers instituted prohibitions on advertisements for escort services, cigarettes and Happy Hours.[13]

In general, these prohibitions are designed to protect readers from what the newspaper perceives as harmful or illegal information.[14] By contrast, "rejected" advertisers are likely to view such blanket bans as arbitrary denial of their right to free speech.[15] For example, when the Los Angeles Times decided several years ago to prohibit ads for X-rated movies (and thereby give up $1 million in annual revenue), a damage suit resulted.[16] Quite often, advertisements are rejected because the publication considers its contents "objectionable." That sort of monitoring, some observers claim, constitutes not censorship, but instead a public service to the community.[17]

Meanwhile, proponents of a right of enforced access to the media claim that a privately owned newspaper, especially in a

single-newspaper town, actually performs a governmental function as a quasi-public utility. Access advocate Jerome A. Barron argued in a notable law review article that a newspaper's refusal to grant access to its pages constitutes state action abridging expression.[18] Another argument is that newspapers are, to a degree, common carriers, and that while they should be permitted to ban a particular category of advertisement (e.g. tobacco), they should not be allowed to discriminate within a classification.[19]

The Legal Background

A newspaper's ability to refuse to accept an advertisement does not take place in a vacuum. Instead, it is based on the inherent belief, supported by extensive case law, that the government's authority to tell a newspaper what to publish is not greater than its ability to tell the newspaper what to refrain from publishing.[20]

A 1974 Supreme Court ruling, in a case dealing with a political candidate's right of reply to an editorial, established the doctrine that there is not right of enforced editorial access to the printed media.[21] The applicability of the Tornillo ruling to advertisements has not been directly established, but a long and rich tradition of case law and dicta suggests strongly that advertiser access to the privately owned print media is not guaranteed. In dicta in the Tornillo decision, Chief Justice Burger declared that a newspaper is "more than a passive receptacle or conduit for news, comment and advertising."[22] In a more general sense, Chief Justice Vinson wrote: "Freedom of speech . . . does not comprehend the right to speak on any subject at any time."23

Of course, when a newspaper is not privately owned, as in the case of a school newspaper at a state institution, a refusal to accept advertising may constitute state action. Recently, a student editor at Wayne State University's campus newspaper was fired for refusing to publish military recruitment ads.[24] In some cases, such as Lee v Board of Regents, courts have held that a school publication could not outrightly reject advertisements;[25] but, other cases have resulted in courts declaring that a state university's law journal,[26] a student newspaper[27] and a high school newspaper[28] have the authority to accept and reject advertisements as they so desire.

The non-guarantee of access is not limited to newspapers. Courts have found that the publishers of a legal directory could refuse an attorney's advertisement without violating his rights or the antitrust laws[29] and that the telephone company does not have to accept all advertisements submitted to its directories.[30]

Among the dozens of court precedents dealing with a newspaper's authority to deny access to advertisers, only one decision has declared that there is a right of access to the media. In Uhlman v Sherman, an Ohio court declared in 1919 that newspapers are clothed with a public interest because of the level of dependence, interest and concern people have for their newspaper. The court continued that newspapers are:

> amendable (sic) to reasonable regulation and demands of the public . . . A newspaper company, when it has advertising space to sell, has no right to discriminate against a local merchant who, in his application for advertising, complies with the law and the reasonable rules of the newspaper company in reference to the character of his advertisement, and tenders the regular and ordinary fee charged therefore by said paper.

Access advocate Barron wrote that the judge in Uhlman was "very much ahead of his time" since he recognized that a monopoly press, like other monopoly public utilities, should have some compulsory obligations.[33]

But, Uhlman is an exception to a clearly established rule. Most courts have held that a newspaper is not a public utility with the ability to effect state action. In an early Iowa case, the court said the test to determine if a newspaper is a public utility should not be the extent to which the community depends upon it, for in that case, the baker and grocer would also become public utilities.[34] A lengthy list of other court rulings also claim newspapers do not perform a governmental function.[35]

Newspapers may refuse to publish advertisements regardless of whether they are for commercial products or services,[36] political "ad-vertorials"[37] or legal notices.[38] Those rules hold even when the prospective advertiser offers to pay the established rate[39] and when that person has previously advertised with the newspaper in question.[40]

However, despite a seemingly insurmountable set of barriers to advertiser access, a newspaper's right to refuse advertising is not absolute in a theoretical sense. In a practical sense, few refusals actually occur.

Newspaper refusals which violate antitrust laws, which are part of a conspiracy or which breach a contract are not protected.

While there are about 1,700 dailies in the United States, only 114 cities have more than one daily newspaper, and in several of

those cities, newspapers operate as monopolies. However, courts have held that the mere existence of only one newspaper does not trigger into effect a right of enforced access unless the publication uses its position to lessen competition. In a 1980 ruling, the Second Circuit Court of Appeals stated:

> We would hesitate long before holding that a newspaper, monopoly or not, armed with both the First Amendment and a reasonable business justification, can be ordered to publish advertising against its will.[41]

A lengthy list of court rulings has established that a newspaper need not grant special degrees of access because it is the "only game in town,"[42] even if it decides to ban an entire class of advertisements.[43] Needless to say, courts have declared that newspapers may refuse advertising which is deceptive[44] or which promotes illegal activity.[45]

The right to turn away advertisers becomes muddied when the refusal is perceived as a deliberate attempt at lessening competition and enhancing monopoly. In the late 1940s, the Lorain (Ohio) Journal had a monopoly in its community, reaching 99 percent of the households. When a new radio station appeared on the scene, the powerful Journal refused to accept advertising from anyone who had bought time at the competing station. The Supreme Court ruled that the Journal's refusal to deal violated the federal antitrust laws.[46] Somewhat along the same lines, when the Kansas City Star used its dominant position to threaten advertisers with ad rejections if they also advertised in competing media, the courts declared such a practice anticompetitive.[47] However, in both the Lorain and Kansas

City cases, there was no suggestion that a newspaper is obligated to accept advertising; instead, they were told they cannot refuse advertising in an effort to lessen competition.

Beyond the antitrust laws, the law of contracts also plays a significant role in advertising refusals. A newspaper which contracts with an advertiser for the placement of an ad must publish the advertisement.[48] Once a publication accepts an advertisement,[49] if it contains nothing illegal it must be published.

PURPOSE

The purpose of this paper is to examine the types of advertisements newspapers refuse and the attitudes of advertising managers about guidelines and laws concerning advertising refusal.

RESEARCH QUESTIONS

1. What types of products/services are not accepted and what is the relationship between the newspaper's geographic location and its likelihood to refuse those types of advertisements?

2. What types of products/services are not accepted and what is the relationship between the newspaper's circulation and its likelihood to refuse a certain types of advertisement?

3. What is the relationship between a newspaper's geographic location and the advertising manager's attitude toward the guidelines and laws concerning advertising refusal?

4. What is the relationship between a newspaper's circulation and the advertising manager's attitude toward the guidelines and laws concerning advertising refusal?

5. How often do advertising managers refuse to accept advertisements?

METHOD

Newspapers were selected from the 1985 Editor & Publisher Yearbook using a systematic probability sampling method. A questionnaire, accompanied by a cover letter, was mailed to advertising managers at 150 daily newspapers in January 1986. Among the items asked was a checklist of 18 products/services[50] that might be subject to rejection.

CHARACTERISTICS OF SAMPLE

Responses were received from 75 newspapers, representing a return rate of 50%. The respondents were categorized as follows: circulation of less than 25,000 (54.7%); 25,000 to 49,999 (21.3%); 50,000 to 99,999 (9.3%); 100,000 to 249,999 (8%); and more than 250,000 (5%). The percentage breakdown of the responses did not significantly differ from the percentage breakdown of all dailies listed in the Editor & Publisher Yearbook.

The following breakdown occurred by region: East (13.3%); South (20%); Midwest (40%); Southwest (14.7%), and West (12%).[51]

Two of every three newspapers responding (66.7%) are members of a newspaper group, and 69.3% are not in direct competition with another daily.

FINDINGS

Of the 75 papers, the majority of the advertising managers (56%) indicated they have no formal policy regarding advertising refusal and have to decide every questionable ad on a case-by-case basis. Thirteen papers have an unwritten policy that is "understood" by everyone in a decision-making position. Also, thirteen papers have a formal, written policy that is widely circulated among staff members. Six papers have a combination decision-making process: written for some products/services and unwritten, but understood, for others.

At some of the papers (46.6%) the advertisement rejection decision is made by the local advertising manager. The local publisher or owner makes the decision at 17.3% of the newspapers, and a combination of people, often including a lawyer, makes the decision at 36% of the newspapers.

Products/Services and Geographic Location

Regardless of the geographic location, eight products/services generally are accepted. Those include: beer (98.7%); cigarettes (100%); feminine hygiene products (97.3%); handguns (89.3%); liquor (92%); legal notices (100%); mail order (88%); and vending machines (90.7%). It should be noted that some newspapers indicated that state laws excluded liquor and mail order advertisements.

By geographic locations, the southern newspapers tended to refuse more products/services--abortion services, contraceptives, direct mail, escort services, liquor, lotteries, vending machines, work-at-home, and X-rated movies--than the other regions in the country.

As for the other regions of the country, the western papers were most likely to refuse more bingo ads, the eastern papers more handguns ads, the midwestern papers more mail order ads, and the southwestern papers more massage parlors and palmists/fortune tellers ads than the rest of the country. For example, 32% of all newspapers in the country would not run advertising for abortion services; however, 53.3% of the southern newspapers refused abortion services advertising. (See Table 1)

Products/Services and Circulation

Smaller newspapers[52] were less likely to accept advertising for the following products/services: abortion services, bingo, contraceptives, direct mail, escort services, liquor, lotteries, mail order, work-at-home, and X-rated movies.

Larger newspapers were less likely to accept advertising for the following products/services: handguns, palmists/fortune tellers, and vending machines. (See Table 2)

Advertising Managers' Attitudes and Regional Breakdown

Overall, 97.3% of all advertising managers agreed that their newspapers should have an absolute right to refuse any advertising. The highest percentage occurred in the East where 80% of the managers strongly agreed, while the Midwest was the only region without agreement.

As to whether a newspaper in a monopoly situation has a greater obligation to accept all advertising than a newspaper in a non-monopoly situation, 76% of the managers disagreed. The highest percentage of disagreement (80%) occurred in the South.

Table 1

Likelihood of Newspapers to Reject Certain Categories of Advertisements by Geographic Location

Product/Services	Percentage of Newspapers Refusing	Region where Refusal is Most Likely***
Abortion Services	32%	South (53.3%)
Bingo	40%	West (55.6%)
Contraceptives	26.6%	South (33.3%)
Direct Mail	17.3%	South (33.4%)
Escort Services	46.7%	South (60%)
Handguns	9.4%	East (30%)
Liquor	8%	South (13.3%)
Lotteries	46.7%	South (86.7%)*
Mail Order	9.3%	Midwest (20%)
Message Parlors	57.3%	Southwest (82%)**
Palmists/Fortune Tellers	36%	Southwest (54.5%)
Vending Machines	6.7%	South (20%)
Work-at-home	44%	South (60%)
X-rated Movies	38.7%	South (60%)

*Significant at the .01 level

**Significant at the .05 level

***The rejection of an advertisement may represent a number of possible situations, including both state laws and a newspaper's policy.

Table 2

Likelihood of Newspapers to Reject Certain Categories of Advertisements by Circulation

Products/Services	Percentage Refused*** Smaller papers*	Larger papers*
Abortion services	36.8%	16.6%
Bingo	42.1%	33.3%
Contraceptives	29.8%	16.6%
Direct Mail	24.5%	11.1%
Escort Services	50.8%	44.4%
Handguns	3.5%	33.3%**
Liquor	10.5%	None
Lotteries	49.1%	38.8%
Mail Order	15.7%	None
Message Parlors	59.6%	15.7%
Palmists/Fortune Tellers	35%	38%
Vending Machines	8.7%	11%
Work-at-home	52.6%	16.6%
X-Rated Movies	49.1%	5.5%

*Smaller newspapers in this study are defined as those with an average circulation of less than 50,000. Larger newspapers are those with an average daily circulation of 50,000 or more.

**Significant at the .01 level.

***The rejection of an advertisement may represent a number of possible situations, including both state laws and a newspaper's policy.

A majority of the advertising managers (82.7%) agreed that advertising refusal should be based on a newspaper's policy as opposed to state law.

Overall, 92% of the advertising managers agreed that radio and television should have the same freedom as newspapers for establishing refusal policy. (See Table 3)

Advertising Managers' Attitudes by Circulation

Because advertising managers at both smaller and larger newspapers agreed for the most part with each other regarding attitudes toward advertising refusal, circulation was not a differentiating variable.

Most (96.4%) of the advertising managers at smaller newspapers and 100% of the managers at the larger newspapers agreed that newspapers should have an absolute right to refuse any advertising.

As to whether a newspaper in a monopoly situation is greater to accept advertisements, smaller papers agreed more (83.3%) than larger papers (76.3); however, these figures were not significantly different.

A majority of the advertising managers (82.7%) agreed that advertising refusal should be based upon a newspaper's policy rather than state law. The managers of smaller papers tended to agree more (85.9%) than larger papers (72.2%).

Smaller papers also agreed more (94.7%) than larger papers (83.3%) that local radio and television stations should have the same right of refusal as the newspapers.

Table 3

Advertising Managers' Attitudes About Guidelines and Laws Concerning Advertising Refusal Policy

Statement	Percentage Agree Strongly	Percentage Agree	Percentage Disagree	Percentage Disagree Strongly
A newspaper should have an absolute right to refuse any advertising.	60%	37.3%	2.7%	0%
A newspaper in a monopoly situation has a greater obligation to publish advertising than a newspaper in a non-monopoly situation.	7%	16%	54%	23%
Advertising refusal should be based on a newspaper's policy and not state law.	33%	53%	13%	1%
Local radio and television stations should have the same right of refusal as the local newspaper.	34%	59%	7%	0%

Number of Advertisements Refused

A majority of advertising managers (90.7%) refuse less than 10 advertisements per month. Advertising managers refusing between 11 and 25 advertisements per month accounted for 5.3% of the sample while 2.7% of the managers indicated they refuse between 26 and 50 advertisements per month. No manager indicated he or she has to refuse more than 50 advertisements in a month.

CONCLUSION

Even though few newspapers (8%) refuse more than 10 advertisements in a typical month, certain patterns do exist regarding advertising refusal policy.

First, newspapers have a tremendous diversity regarding their refusal policy, as most of the percentages of refusal (see Table 2) fall in the gray area (between 20% to 60% refusal rate).

In some cases (e.g. escort services, lotteries) newspapers are almost evenly divided on acceptance or refusal. This underscores the principal of the marketplace of freedom for a newspaper to accept or reject advertising. These figures indicate that a newspaper's refusal policy reflects local guidelines as opposed to state law. For example, Rhode Island's State Supreme Court ruled in 1985 that a state law prohibiting intrastate media from publishing liquor price information is a constitutional restraint on commercial speech.[53]

Second, southern newspapers tend to be the most conservative newspapers in the country, rejecting nine of the products/services

listed. Four of the products/services--abortion services, contraceptives, X-rated movies and escort services--might reflect the "Bible Belt attitude" while the lotteries' rejection reflects state law.

Third, once a policy has been established, even though that policy may not be written, it appears that companies or establishments may not even try to advertise in certain communities. This "not even trying to advertise" behavior may explain the few advertisements rejected (90% of the papers reject less than 10 in one month) while 76% of the newspapers do not have a written policy.

Fourth, the smaller papers tend to be more conservative, rejecting ten of the products/services on the checklist. Interestingly enough, eight of those products/services were the same ones that had been rejected by southern papers.

Fifth, the larger papers rejected handgun advertisements more than the smaller papers, possibly reflecting a social responsibility attitude about advertising handguns in a potentially high crime environment--the more populous cities. Also, smaller papers, especially in the South and Southwest, may be reflecting the "no gun control" attitudes of their communities, and therefore feel no responsibility toward running those advertisements.

Sixth, southern advertising managers tended to be more conservative with respect to their absolute right to refuse any advertisement in a non-monopoly situation. This attitude undoubtedly is indicative of the monopoly situation most of the southern papers face. The southern advertising managers (again indicative of their

state laws) state that advertising refusal policy needs to reflect both a newspaper's policy and its state's laws.

Seventh, circulation does not appear to be a differentiating variable when comparing advertising manager's refusal policy. All managers wanted to have as much latitude as possible when making a decision about refusal.

Eighth, newspapers not only want to continue the freedom of refusal they now have but also want to extend that freedom to broadcasters.

Commercial speech in the United States has gained significant constitutional protection in recent years, and apparently the view from the advertising manager's desk is that this freedom for them to accept or reject as they see fit should continue. But, the freedom does not extent as fully to those who wish to pay for having their message in print. As press critic A. J. Leibling once said, "Freedom of the press belongs to those who own one."

Notes

[1]See Bigelow v Virginia, 421 U.S. 809 (1975) and Virginia State Board of Pharmacy v Virginia Citizens Consumer Council, 425 U.S. 748 (1976).

[2]State of Oregon v Hollinshead, 151, P 710 (1915).

[3]South Dakota Retail Beverage Dealers Association v Wendell, 46, USLW, 2278 (1977).

[4]For a thorough discussion of state laws relating to liquor advertising. See Mandel, Richard S. Liquor advertising: Resolving the clash between the First and Twenty-first amendments. 59 NYU Law Review, 157-186, April 1984.

[5]Dunagin v Oxford, 10 Med. L. Reptr. 1001 (1983).

[6]1984 Editor & Publisher International Yearbook.

[7]Memphis Publishing Co. v Leech, 539 F Supp 405 (1982).

[8]State of Idaho v Newman, 696 P 2d 856 (1985)

[9]See Pittsburgh Press Co. v Human Relations Commission, 413 U.S. 376 (1973).

[10]U.S. Council on drug abuse seeks ban on cigarette advertising. Christian Science Monitor, January 25, 1985, p. 2.

[11]Based on listings for "advertising not accepted" in 1984 Editor & Publisher International Yearbook.

[12]Ibid.

[13]Guzda, M. K. All the ads fit to print. Editor & Publisher, January 26, 1985, pp. 7, 18.

[14]Ruth, Marcia. Taboo ads. Presstime, October 1985, p. 34.

[15]Rohrer, Daniel M. Mass media, freedom of speech and advertising. Dubuque: Kendall/Hunt Publishing Co., 1979, p. 57.

[16]In Adult Film Association of America v Times-Mirror Co., 46 USLW 2556 (1978), the court upheld the Times' decision to reject ads as it sees fit to do so.

[17]Ad censorship policy seen as public service. Editor & Publisher, July 10, 1982, pp. 27, 30.

[18]Barron, Jerome A. Access to the press--a new First Amendment right. 80 Harvard Law Review 1641, 1669 (1967).

[19]See Associates & Aldrich Co., Inc. v Times Mirror Co., 440 F 2d 133 (1971) in which the court held that no governmental agency should dictate the contents of a newspaper.

[20]Rotzoll, Kim B., Haefner, James E. and Sandage, Charles H. Advertising in contemporary society. Columbus: Grid Publishing, 1976, pp. 132-133.

[21]Miami Herald Publishing Co. v Tornillo, 418 U.S. 241 (1974).

[22]Id. at 258.

[23]American Communication Association v Douds, 339 U.S. 382, 394 (1950).

[24]Student editor is dismissed. Editor & Publisher, October 19, 1985, p. 4.

[25]306 F Supp 1097 (1969), aff'd 441 F2d 1257 (1970).

[26]Avins v Rutgers, 385 F2d 151 (1967).

[27]Mississippi Gay Alliance v Goudelock, 536 F2d 1073 (1976).

[28]Zucker v Paintz, 299 F Supp 102 (1969).

[29]Hester v Martindale-Hubbell, 493 F Supp 335 (1980).

[30]Kops v New York Telephone Co., 456 F Supp 1090 (1978), aff'd 603 F2d 213 (1979); Bakal v New York Telephone Co., 411 NYS2d 859 (1978).

[31]22 Ohio N.P., N.S. 225, 31 Ohio Dec. 54 (1919).

[32]Id. at 62-63.

[33]Barron, Jerome A. Freedom of the press for whom? Bloomington: Indiana University Press, 1975.

[34]Shuck v Carroll Daily Herald, 247 NW 813 (1933).

[35]Among those rulings are: Cyntje v Daily News, 9 Med. L. Reptr. 1612 (1982); Fatouros v Herald Telephone, 6 Med. L. Reptr. 2274 (1980); J. J. Gordon Inc. v Worcester Telegram Publishing Co., 177 NE2d 586 (1961); Associates & Aldrich Co., Inc. v Times-Mirror Co., 440 F2d 133 (1971); Wisconsin Association of Nursing Homes Inc. v The Journal, 285 NW2d 891 (1979); Resident Participation of Denver Inc. v Love, 322 F Supp 1100 (1971); and Approved Personnel v Tribune Co., 177 So 2d 704 (1965).

[36]Among the lengthy list of cases supporting this view, see Adult Film Association of America v Times Mirror Co., 46 USLW 2556 (1978).

[37]Perhaps the strongest statement regarding the right of newspapers to deny access to issue-oriented advertising was made in Chicago Joint Board of Amalgamated Clothing Workers v Chicago Tribune, 435 F2d 470 (1971). See also, Mid-West Electric Cooperative Inc. v West Texas Chamber of Commerce, 369 SW 2d 842 (1963) and Resident participation of Denver Inc. v. Love, 322 F Supp 1100 (1971).

[38]Commonwealth v Boston Transcript Co., 249 Mass 477, 144 NE 400 (1924); Lake County v Lake County Publishing and Printing Company, 117 NE 452 (1917).

[39]Re Louis Wohl, 50 F2d 254 (1931); Poughkeepsie Buying Service Inc. v Poughkeepsie Newspapers Inc., 131 NYS2d 515 (1954).

[40]Modla v Tribune Publishing Co., 480 P 2d 999 (1971).

[41]Homefinders v Providence Journal, 6 Med. L. Reptr. 1018, at 1020 (1980).

[42]See Wisconsin Association of Nursing Homes Inc. v The Journal Co., 285 NW2d 891 (1979); America's Best Cinema Corp. v Fort Wayne Newspapers Inc., 347 F Supp 328 (1972); Staff Research Associates Inc. v Tribune Co., 346 F2d 372 (1965).

[43]America's Best Cinema Corp. v Fort Wayne Newspapers Inc., 347 F Supp 328 (1972).

[44]Staff Research Associates Inc. v Tribune Co., 346 F2d 372 (1965).

[45]In re Louis Wohl, 50 F2d 234 (1931).

[46]Lorain Journal Co. v United States, 342 US 143 (1951).

[47]Kansas City Star Co. v United States, 240 F2d 643 (1957); cert. den 345 US 923.

[48]Fatouros v Herald Telephone, 6 Med. L. Reptr. 2274 (1980). Also, in Modla v Tribune Publishing Co., 480 P2d 999 (1971), the court noted that absent a contractual obligation, a newspaper is not required to accept any advertising.

[49]See Caruso, Peter J. Your right to refuse ads. Editor & Publisher, May 12, 1984, p. 48 for a discussion on exactly what constitutes "acceptance" of an advertisement, particularly on called-in copy.

[50]The 18 products/services on the checklist included: abortion services, beer, bingo, cigarettes, contraceptives, direct mail, escort services, feminine hygiene products, handguns, legal notices, lotteries, mail order, message parlors, palmists/fortune tellers, vending machines, work at home and X-rated movies.

[51]Regional breakdown: East: Massachusetts, New Jersey, New York, Pennsylvania, Virginia, West Virginia; South: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin; Southwest: Arizona, Arkansas, New Mexico, Oklahoma, Texas: West: California, Montana, Nevada, Washington.

[52]Smaller newspapers in this study are defined as those with an average daily circulation of less than 50,000. Larger newspapers are those with an average daily circulation of 50,000 or more.

[53]Rhode Island Liquor vs. Evening Call Publishing Co., 12 Med. Law Rep. 1121 (1985).